

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5379 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARSOTTAMBHAI MOTIRAM DECD.

Versus

DEVCHANDBHAI PARBHUBHAI

Appearance:

MS KALPANA BRAHMBHATT for Petitioners

MR KT DAVE, AGP, for Respondents No. 3, 4, 5, 6

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/98

ORAL JUDGEMENT

#. The petitioner, since deceased, now represented by his legal heirs filed this Special Civil Application and challenge has been made to the orders of respondent No.5, Assistant Collector, Taluka Choryasi Prant, District Surat, dated 20.1.86, under which the Mutation Entry No.696 dated 18.2.82 made in favour of the petitioner of the land in dispute has been cancelled by taking the

matter under suo-motu revisional powers under section 211 of the Bombay Land Revenue Code.

#. The facts of the case in brief are that the respondent No.1, an agriculturist, was the owner of the land bearing Survey No.44, block No.126, admeasuring 4 hectares, 20 acres, 88 sq.mts. The respondent No.1 was the member of the respondent No.2-society, and had taken a crop loan from respondent No.2 and a charge was created on the land aforesaid belonging to him for repayment of the said loan. The respondent No.1 committed a default in repayment of the said loan and thereupon the respondent No.2 made an application to the District Registrar, Cooperative Societies, Surat, under Section 106 of the Gujarat Cooperative Societies Act, for granting certificate for recovery of the said amount. After making necessary enquiry, the Registrar, Cooperative Societies, Surat, granted a certificate on 19th August 1976 in favour of respondent No.2 under Section 106(3) of the aforesaid Act. The respondent No.3 who was appointed as a Special Recovery Officer under the provisions of the Gujarat Cooperative Societies Act, issued a Public Notification under section 165 of the Bombay Land Revenue Code for auction of the land of respondent No.1 and the auction was fixed on 18.12.79 at 5.00 p.m. The petitioner was one of the bidders who participated in the auction and his bid was highest, i.e. Rs.49,500/-. That bid has been accepted by respondent No.3 and the sale was knocked down in favour of petitioner. The amount has been deposited by petitioner with respondent No.3 and a sale certificate was issued to him. On the basis of right acquired, by virtue of sale certificate, the petitioner reported the matter to the Village Accountant/ Talati-cum-Mantri of village Bharthana and Entry No.662 was posted in the revenue record village Form No.6 in respect of the land which has been purchased by petitioner in auction. As there was some mistake in description of the area of the land, necessary correction has been made and correct Entry No.677 was posted in the Record of Rights. That Entry was certified by Mamlatdar, Choryasi, on 14.4.81 and the entry was mutated in the Mutation Register in Village Form No.6 under Section 136(d) of the Bombay Land Revenue Code. As the land which has been sold to the petitioner in public auction could not be of new tenure, Entry No.677 was corrected and a new Entry No.696 was posted on 18.2.82, which Entry was certified by Mamlatdar on 19.6.86. The Entry No.696 which was posted in Village Form on 18.2.82 was taken in suo-motu revision by respondent No.5 and a notice came to be given to the petitioner on 27th December 1985. After hearing the

petitioner, under the order impugned in this Special Civil Application, the Entry No.696 dated 18.2.82 in the Village Form was ordered to be cancelled. Hence this Special Civil Application.

#. This Special Civil Application has been admitted by this Court after notice to the respondents on 24.11.87 and interim relief in terms of para-20(C) has been granted. So the respondents No.4, 5, 6 or their subordinates were restrained from taking any further action pursuant to the order of respondent No.5 dated 20.1.86, annexure 'E' impugned in this Special Civil Application.

#. None of the respondents have filed reply to the Special Civil Application. So the averments made in the Special Civil Application stand uncontroverted. However, Mr.K.T.Dave, learned counsel for respondents No.3 to 6 made oral submissions in the matter.

#. The learned counsel for the petitioner contended that the order of respondent No.5 is wholly arbitrary and unjustified. The provisions of Section 43 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as 'Act 1948') are not applicable to the sale of agricultural land by public auction in connection with the dues of certain categories as mentioned in the said provision and that provision has illegally been made applicable to the present case. So far as the other grounds given for cancellation of Entry are concerned, the learned counsel for the petitioner contended that the provisions of Section 42 of the Urban Land Ceiling Act are also not attracted to the present case. Carrying this contention further, the learned counsel for the petitioner urged that the petitioner has purchased the land in dispute subject to restrictions and applicability of the Urban Land Ceiling Act and in fact after purchase of this land, the petitioner has already submitted a declaration under Section 6 of the said Act. The learned counsel for the petitioner has given out that if the land is found in excess of the ceiling limit, then the petitioner has no objection to surrender the excess land to the State Government. Lastly, the learned counsel for the petitioner contended that the powers of suo-motu revision under Section 211 of the Bombay Land Revenue Code could have been exercised by respondent No.5 within a reasonable time of sale and in the present case the suo-motu revisional powers have been sought to be exercised after about more than five years and eleven months from the date of sale of the land and more than three years and ten months from the date of Mutation

Entry No.696 was posted in the village Form in favour of the petitioner. This delay on the part of respondent No.5 in exercising suo-motu revisional powers under Section 211 of the Code vitiates the order itself.

#. On the other hand, Mr.K.T.Dave, the learned counsel for respondents No.3 to 6 contended that the sale of the land in question was improper and illegal and as such, the respondent No.5 was within its competence to take the said Entry in suo-motu revision and looking the the facts of this case, though delay has been caused, the same may not be taken to be a ground for setting aside the order impugned in this Special Civil Application. The sale of the land has been affected contrary to the provisions of Section 43 of the Act 1948 and Section 42 of the Urban Land Ceiling Act and as such this Court may not interfere in the matter.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. The sale of the land in dispute made in favour of the petitioner in public auction by respondent No.3 in pursuance of the sale certificate issued by the District Registrar of Cooperative Societies, Surat, has not been quashed and set aside or cancelled by the respondents No.4 and 5. So, only the Mutation Entry which has been made in the record of Rights has been cancelled vide the impugned order. The Sale Deed still holds the field as also the petitioner continues in possession of the land and only the Entry which has been made in the revenue records of his name on the basis of sale certificate has been cancelled. These facts are not being controverted by learned counsel for respondents No.3 to 6.

#. From the reading of the order of respondent No.5 impugned in this Special Civil Application, I find that the Mutation Entry No.696 posted on 18.2.82 has been cancelled in exercise of suo-motu powers of revision under Section 211 of the Code on two counts, namely, the sale of the land in dispute was contrary to the provisions of Section 42 of the Urban Land Ceiling Act and Section 43 of the Act 1948. The respondent No.5 has proceeded in the matter taking it to be a case that this sale could have been affected only after 'no objection' is granted for transfer of this land by the competent authority under the Urban Land Ceiling Act as well as under Section 43 of the Act 1948.

##. So far as the breach of Section 42 of the Urban Land Ceiling Act is concerned, it is suffice to say that

Section 42 of the Urban Land Ceiling Act provides that the provisions of the Urban Land Ceiling Act will have overriding effect. The learned counsel for respondents No.3 to 6 then contended that before transferring these lands, permission has to be taken by respondent No.5 from the competent authority under Section 26 of the Urban Land Ceiling Act. I do not consider it to be appropriate to go on this question any more as whatever the land is purchased by the petitioner is subject to the provisions of the Urban Land Ceiling Act and the learned counsel for the petitioner has very fairly submitted before this Court that the petitioner shall abide by the provisions of the Urban Land Ceiling Act and in case on the declaration filed by them under Section 6 of the said Act, any land out of the land purchased by the petitioner is found in excess of ceiling limit, then certainly that excess land has to be surrendered to the State Government. In view of the fact that declaration has already been filed by petitioners of this land under the provisions of the Urban Land Ceiling Act and further the statement made by the learned counsel for the petitioner, this ground which has been given for cancellation of Entry No.696 of the land in dispute in favour of the petitioner by respondent No.5 no more survives.

##. Now I have to consider whether the permission under Section 43 of the Act 1948 has to be taken by respondent No.5 before putting the land in dispute for auction. Section 43 of the Act 1948, which relates to restriction on transfer of land purchased or sold under this Act, provides that no land or any interest therein purchased by a tenant under sections 17B, 32, 32F, 32I, 32O, 32U, 431D or 88E or sold to any person under Section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector. Sub section (1)(AA) of Section 43 of the Act 1948 provides that notwithstanding anything contained in sub-section (1), it shall be lawful for such tenant or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1983, the Agriculturists' Loans Act, 1984, or the Bombay Non-agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or cooperative society (emphasis provided), and

without prejudice to any other remedy open to the State Government, bank or cooperative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or cooperative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan. On having a glance at the provision as contained in sub section (1)(AA) of Section 43 of the Act 1948 as aforesaid, I am satisfied that in case the agriculturist has taken a loan and created a charge or interest in the land in favour of a cooperative society then where the loan is not paid the Cooperative society is within its competence to attach and sell the land and apply its proceeds in the payment of the loan and for doing so, no permission of the Collector as provided under Section 43 of the Act 1948, is necessary as well as no fee has to be paid for transfer of such land. The respondent No.5, while passing the order impugned in the Special Civil Application has lost sight of this provision and as such, the cancellation of Entry No.696 posted in favour of the petitioner in the record of Rights is illegal. Section 43 of the Act 1948 aforesaid was wrongly made applicable to the present case and as such there is an error apparent on the face of the order impugned in this Special Civil Application. In view of the fact that on merits the order impugned in this Special Civil Application cannot be maintained, I do not consider it to be necessary to go on and examine the other contentions regarding the delay made in initiating of suo-motu revisional powers by respondent No.5 in this matter.

##. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 20.1.86 of the respondent No.5, the Assistant Collector, Tal. Choryasi, Dist. Surat, annexure 'E' to the Special Civil Application, is quashed and set aside. Rule is made absolute. No order as to costs.

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(sunil)